IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3277 of 2000
And
SPECIAL CIVIL APPLICATION No 3275 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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UNION OF INDIA
Versus
DHIRAJBHAI MAGANBHAI

Appearance:
1. Special Civil Application No. 3277 of 2000
MRS VASAVDATTA BHATT for Petitioner
MR JJ DAVE for Respondent

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/08/2001

COMMON ORAL JUDGEMENT

#. Since the common questions of law and facts are involved in both these petitions, the same are being

disposed of by this common judgment.

#. I have heard Ms.Vasavdatta Bhatt, learned advocate for the petitioner and Mr.J.J.Dave, learned advocate for the respondents.

#. In both these petitions, the petitioner has challenged the validity and legality of the order passed by the Labour Court (Central), Junagadh in Recovery Application (Central) No.1 of 1994 as well as Recovery Application (Central) No.2 of 1994. The services of each of these respondents were terminated and against the said termination, concerned employee approached the Central Administrative Tribunal by filing O.A.No.715 of 1988. The said OA was partly allowed on 9.11.1993 and the order of reinstatement without back-wages was passed. The respondents herein filed Recovery Application (Central) No.1 of 1994 as well as Recovery Application (Central) No.2 of 1994 for getting the benefits as to seniority. Over and above the same, C.A. No.16 of 1994 was filed in OA No.715/88 simultaneously. The said C.A. Application was rejected by the Central Administrative Tribunal on 28.8.1995. So far as the recovery applications are concerned, the Presiding Officer allowed the same by order each dated 21.2.2000. The petitioner has challenged each of the said orders by filing these special civil applications.

#. It is required to be noted that, there was also an identical special civil application filed by the present petitioner against one of the employees wherein the Labour Court (Central), Junagadh has disposed of Recovery Application (Central) No.3 of 1994. The said special civil application being Special Civil Application No.3273 of 2000 was disposed of by this Court by observing in paragraph 21 as under:

> "Upon perusal of the order dated 9.11.93 passed by the CAT, it appears that the respondent was to be reinstated with continuity of service in accordance with the rules and regulations which were in force at the relevant time. At the most, for the purpose of determining the wages payable to the respondent after his reinstatement, the petitioner can be directed to fix the pay of the respondent in the relevant pay-scale. For the purpose of determining the pay of the respondent upon his reinstatement, the petitioner had to look at the structure of payscale which was in force at the time when the service of the respondent was wrongfully terminated. There

should have been notional pay fixation and on the basis thereof the respondent's pay should have been fixed in the payscale which was in force at the time when he was actually reinstated in service."

#. Both the learned advocates state that, both these petitions are also on identical point and are required to be disposed of on the same line on which Special Civil Application No.3273 of 2000 has been disposed of by this Court.

#. In that view of the matter, it is directed that the petitioner shall fix the notional pay of the respondents from the date on which they were reinstated. It is also not in dispute that a casual labourer is not entitled to pay-scale from the date on which he is appointed as a temporary casual labourer. It has been submitted by the learned advocates that the respondents have become permanent casual labourers after a period of 120 days from the date on which they were appointed for the first time, by virtue of the order passed by the Central Administrative Tribunal on 9.11.1993. Under these circumstances, it is directed that, if wages payable to the respondents are not notionally fixed, the petitioner shall fix the same as directed by the Central Administrative Tribunal.

#. Subject to the aforesaid directions with regard to pay fixation, these petitions are partly allowed. The impugned orders each dated 21.2.2000 passed in Recovery Application (Central) No.1 of 1994 as well as Recovery Application (Central) No.2 of 1994 are quashed and set aside. Rule is partly made absolute. There shall be no order as to costs.

(P.B.Majmudar,J)
(pathan)